

# FISCAL NOTE

**Bill #:** SB0483

**Title:** Corporate bad actor act

**Primary Sponsor:** Toole, K

**Status:** As Introduced

Sponsor signature

Date

David Ewer, Budget Director

Date

## Fiscal Summary

	<b><u>FY 2006</u></b> <b><u>Difference</u></b>	<b><u>FY 2007</u></b> <b><u>Difference</u></b>
<b>Expenditures:</b>		
General Fund	\$99,370	\$51,594
<b>Revenue:</b>		
General Fund	\$0	\$0
<b>Net Impact on General Fund Balance:</b>	(\$99,370)	(\$51,594)

- |   |  |
|---|--|
| <input type="checkbox"/> Significant Local Gov. Impact    | <input checked="" type="checkbox"/> Technical Concerns           |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts           |
| <input type="checkbox"/> Dedicated Revenue Form Attached  | <input checked="" type="checkbox"/> Needs to be included in HB 2 |

## Fiscal Analysis

### ASSUMPTIONS:

#### **Secretary of State**

1. The Office of the Secretary of State is funded with fees that are set commensurate with the cost of the office.
2. SB 483 requires businesses that register with this office to file an additional report if they seek to do business with the State of Montana or any political subdivision of the state.
3. SB 483 requires the Secretary of State to review and file the newly required reports and to report to the Attorney General any company that may be a Corporate Bad Actor by the definition of the bill.
4. This constitutes a new responsibility for this office.
5. In order to not pass the cost of this function on to businesses not pursuing business with a state agency or subdivision of the state the Secretary of State will establish a fee for the filing on the newly required report.
6. As with other fees in this office, the new fee will be commensurate with the cost of the office. Hence, there will not be a net fiscal impact to the Office of the Secretary of State.

#### **Department of Labor and Industry**

7. The department assumes the Secretary of State (SOS) would promulgate rules whereby state agencies would be required to regularly notify it of known "bad actors."

## **Fiscal Note Request SB0483, As Introduced**

(continued)

8. The department would institute procedures to regularly notify the SOS of entities that meet the definitions outlined in SB 483.
9. The department would absorb any costs associated with implementation of procedures required by SB 483.

### **Department of Environmental Quality**

10. Since the requirement that a person submit a compliance history to the Secretary of State at the same time they seek a permit, license, or certificate is not codified in the applicable environmental regulatory acts, the Department of Environmental Quality (DEQ) assumes that submittal of the compliance history will not be a condition of filing a complete environmental permit application and will be enforced by the Secretary Of State.
11. The department will modify the applicable forms provided in permit application materials that are distributed to inform permit applications of the requirement to file a compliance history with the Secretary of State.
12. The department will consult the “bad actor list” maintained by the Attorney General prior to issuance of a new permit to determine if the applicant appears on the “bad actor list” and if issuance of the permit is therefore prohibited. Since the bill requires the Attorney General to make the list available to the public, the department assumes that the list will be readily available and that it will take minimal time to consult the “bad actor list” for each application received. This would be absorbed by existing staff.
13. The bill requires that the compliance history be submitted by each person seeking a “permit, license, and certificate.” The bill prohibits issuance of a new permit to a person on the “bad actor list.”
14. The bill does not specify what constitutes a permit, license or certificate. The department assumes that all types of environmental regulatory permits would be included.
15. The department has a variety of time frames to meet to inform an applicant of its decision on permits, some as short as 60 days within receipt of a filed application. Many permits are processed in under two weeks. The department assumes it may need to delay issuance of some permits until the statutory deadline to ensure the compliance history has been reviewed and the posting of the “bad actor list” has been completed. The department assumes it would still issue permits within the statutorily required time frame even if the compliance history had not been reviewed and the “bad actor list” posting has not been completed by that time.
16. The department does issue contracts in excess of \$100,000. If a company that the department is contracting with is identified on the “bad actor list,” the department will initiate contract termination and proceed with appropriate procurement to complete the project.
17. There would be no fiscal impacts resulting from termination of the initial contract.
18. There would be two kinds of fiscal impacts in initiating a new contract to complete the project. The “costs” associated with time delays are not identifiable. The second type of fiscal impact would be for “mobilization” costs that are the costs of the contractor to move onto the site. This cost would have been paid on the first contract and it would be necessary to pay this cost again. This cost is difficult to quantify. For example: the DEQ has a mine reclamation contract totaling \$739,000. The engineer’s estimate for mobilization/demobilization was \$65,000. The successful contractor, based on the lowest total bid, included \$20,000 in the total \$739,000 bid for mobilization/ demobilization. However, the range of mobilization/demobilization costs by the contractors bidding on this contract was from \$15,000 to \$134,700. Mobilization/demobilization costs vary significantly due to a variety of issues, including the distance of the contractor’s equipment from the job site.
19. As the mandatory contract termination is based upon three major violations in a 10 year period, the DEQ is assuming that these three major violations would not occur during the next biennium. Therefore there is no fiscal impact for the 2007 biennium.

## Fiscal Note Request SB0483, As Introduced

(continued)

### Department of Justice

20. Additional resources will be necessary to offset the cost of development and ongoing staffing needs.
21. Funding for development of the required database will not become available until July 1, 2005 (FY 2006). The development will be contracted, with the completion and implementation not occurring until January 1, 2006 – six months after effective date of the bill. Estimating the cost of development is difficult, due to unknowns such as size, but is estimated at \$44,800. These costs include \$6,000 for a server to house the database and contracted services for database development, database analysis, and web interface development of \$38,800.
22. One attorney position (grade 17) will be required to handle the legal research and possible mandamus actions contained within New Section 5, sub 5a through 5c. The cost for this position will be \$48,219 in FY 2006 and \$48,219 in FY 2007.
23. Additional operating costs will be \$6,351 in FY 2006 and \$3,375 in FY 2007. These costs include \$2,976 for a new employee packet in FY 2006, which includes a desk, chair, bookcase, file cabinet, and computer. Costs for phone, communications, supplies, and travel are estimated at \$3,375 in FY 2006 and \$3,375 in FY 2007.

### FISCAL IMPACT:

#### Department of Justice

	<u>FY 2006</u> <u>Difference</u>	<u>FY 2007</u> <u>Difference</u>
FTE	1.00	1.00
<u>Expenditures:</u>		
Personal Services	\$48,219	\$48,219
Operating Expenses	45,151	3,375
Equipment	<u>6,000</u>	<u>0</u>
TOTAL	\$99,370	\$51,594
<u>Funding of Expenditures:</u>		
General Fund (01)	\$99,370	\$51,594
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>		
General Fund (01)	(\$99,370)	(\$51,594)

### TECHNICAL NOTES:

#### Department of Labor and Industry

1. Section 3 (7) defines the term “violation.” The term appears not to include a fine or penalty of \$1,000 or more that is based upon a violation of a statute if the offender, or the regulatory agency, resolves the dispute without a final adjudication in a court or by administrative proceeding.

#### Department of Natural Resources and Conservation

2. New Section 6(1) does not reference new Section 4(1)(a)(iii) or separately list the statutory permits, licenses, or certificates subject to the bad actor penalty provisions of new Section 6. Permits, licenses, or certificates issued by the Department of Natural Resources and Conservation (DNRC) could therefore be subject to the provisions of SB483.
3. An entity could be in compliance with all provisions of a permit; license or certificate issued by DNRC, but still be terminated from existing agreements. These terminations would subject the state trust beneficiaries to interruption or loss of payments associated with activities such as, but not limited to,

## **Fiscal Note Request SB0483, As Introduced**

(continued)

grazing, crop share, mineral exploration and production, timber harvest, recreational use, and commercial licenses. Payments under such agreements range from \$100 per year to \$100,000 per month.

4. Section 6(2) should be clarified. It is unclear whether the term “contract” in section 6(2) is intended to encompass a “permit, license, or certificate” as set forth in section 6(1). For example, would an agency be required to cancel a permit if the permittee is subsequently added to the bad actor list?

### **Department of Environmental Quality**

5. Not all entities to which the permit prohibition applies are required to file compliance histories. Section 6(1) prohibits approval by the state of any new permit, license, or certificate on the bad actor list. However, section 4(1)(a)(iii) requires that private sector entities file compliance histories only when applying for permits, licenses, or certificates under certain chapters in Titles 75 and 82.

### **Department of Justice**

6. Implementation of the database has to be on a later date than the effective date of the bill, due to development time required.
7. There are other “registry” bills, such as SB 485 and HB 742 requiring development of databases, etc. If all/any of these bills pass, the development costs should be combined or coordinated, where feasible, to minimize the overall costs.